

29 Op. Atty Gen. 579

Department of Justice,
November 22, 1912.

"Sir: I have the honor to respond to your request of October 24 for my opinion on two questions concerning your powers in issuing licenses under the act to regulate radio communication approved August 13, 1912 (37 Stat. 302).

"It appears from your letter that the Atlantic Communication Co. is applying for a license to operate at Sayville, Long Island, apparatus designed for trans-Atlantic radio communication. It is a corporation organized under the laws of the State of New York. Intimations having been received that it is a subsidiary of or is owned by certain German interests, you ask, first--

'Can the Secretary of Commerce and Labor refuse to grant an application for a license to use or operate radio communication (sec. 1) to a company incorporated under the laws of the State of New York (sec. 2) on the ground that the capital of the corporation is German capital?'

"Sections 1 and 2 of the act provide:

"As the Atlantic Communication Co. is a corporation of the State of New York, it is manifest that it comes within the class of persons and corporations to whom licenses are limited. The statute does not undertake to exclude from its benefits domestic corporations whose stock is owned or controlled by foreigners. Unless, therefore, you have some discretion in issuing licenses under the act to the persons or corporations named as its beneficiaries, you have no authority to refuse a license to a domestic corporation on the ground that it is owned or controlled by foreigners.

"The language of the act, the nature of the subject matter regulated, as well as the general scope of the statute, negative the idea that Congress intended to repose any such discretion in you in the matter of licenses. It is apparent from the act as a whole that Congress determined thereby to put the subject of radio communication under Federal supervision so far as it was interstate or foreign in its nature. It is also apparent therefrom that that supervision and control is taken by Congress upon itself, and that the Secretary of Commerce and Labor is only authorized to deal with the matter as provided in the act, and is given no general regulative power in respect thereto. The act prescribes the conditions under which the licensees shall operate, containing a set of regulations, with penalties for their violation.

"This being so, it is manifest that when Congress said that 'a person, company, or corporation within the jurisdiction of the United States shall not use or operate any apparatus for radio communication * * * except under and in accordance with a license, revocable for cause, in that behalf granted by the Secretary of Commerce and Labor upon application therefor,' it did not intend to repose any discretion in the Secretary as to the granting of the license, if the application came within the class to whom licenses were authorized to be issued.

"If there were any doubt on this point, it would be removed by the committee reports on the bill. Thus the Committee on the Merchant Marine and Fisheries of the House (H.R. Rept. No. 582, 62 Cong., 2d sess., p. 9) said:

'The first section of the bill defines its scope within the commerce clause of the Constitution, and requires all wireless stations, ship and shore, public and private, to be licensed by the Secretary of Commerce and Labor. This section does not give the head of that Department discretionary power over the issue of licenses, but in fact provides for an enumeration of the wireless stations of the United States and on vessels under the American flag. The license system proposed is substantially the same as that in use for the documenting upward of 25,000 merchant vessels.'

"The report of the Senate Committee on Commerce also states that the system of licenses for stations and operators is similar to the system for registering and licensing merchant vessels and licensing officers of steam vessels (S. Rept. No. 698, 62 Cong., 2d sess., pp. 12-13). There is no question, of course, that the Secretary has no discretion in licensing vessels possessing the requisite qualifications under the laws of the United States. (Sec 29 Op. 188.)

"Furthermore, Senator Bourne, the chairman of the Senate Committee on Commerce, when the bill was before the Senate, said that 'it is compulsory with the Secretary of Commerce and Labor that upon application these licenses shall be issued.' (48 Cong. Rec. 6015.)

"It may also be observed that Congress was careful to reserve complete control over the situation by providing, in section 2, that 'every such license shall be subject to the regulations contained herein, and such regulations as may be established from time to time by authority of this act or subsequent acts and treaties of the United States,' and also by requiring that 'every such license shall provide that the President of the United States in time of war or public peril or disaster may cause the closing of any station for radio communication and the removal therefrom of all radio apparatus, or may authorize the use or control of any such station or apparatus by any department of the Government, upon just compensation to the owners.'

"Your second question is:

'If that question [i.e., the first] be answered in the negative, can the application for the license described be denied until by reciprocal arrangement with Germany, American capital is guaranteed the right of investing in and controlling corporations organized under German laws to operate coast stations in Germany for trans-Atlantic radio communication?'

"This is answered by what has been said as to the mandatory character of the licensing provisions of the act. An arrangement somewhat similar to that indicated in your question was required by the President as a condition precedent to the landing of foreign-owned cables. (See 22 Op. 13; Moore Dig. Internat. Law, sec. 227.) But that case is not analogous. Action by the Executive was justified there because Congress had not legislated, and it was recognized that the power to impose conditions at all was subject to subsequent congressional action. (22 Op. 27.) Here, Congress has acted and has covered the subject, and, as above stated, you have no discretion but to carry out the provisions of the statute. Therefore, your second question must also be answered in the negative."

Respectfully,

GEORGE W. WICKERSHAM

The Secretary of Commerce and Labor